IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 07-10-2005

CORAM

THE HONOURABLE MR.JUSTICE M.KARPAGAVINAYAGAM

AND

THE HONOURABLE MR.JUSTICE S.R.SINGHARAVELU

WRIT PETITION Nos.3386,18669,18670 AND 18671 OF 2003

1.M/s.Bhanu Construction Co.Pvt.Ltd.,
rep.by its Managing Director
Sri B.Venkateswara Rao,
having its office at 6-3-354/2/B,
Banjara Hills, Hyderabad.

2.Sri B.Venkateswara Rao ...Petitioners in W.P.No.3386/2003

B.Rajasekhar ...Petitioner in W.P.No.18669/2003

1.K.Suribabu
2.B.Nagendramma ...Petitioners in W.P.No.18670/2003

B.Venkat Rao ...Petitioner in W.P.No.18671/2003

-vs-

1.Andhra Bank,
rep.by its Chief Manager,
Balanagar Branch,
Hyderabad.

2.State Bank of India,
rep.by its Asst.General Manager,
Yellareddyguda Branch,
Hyderabad.

3.Debts Recovery Tribunal,
V Floor, Triveni Complex,
Abids, Hyderabad.

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4.Debts Recovery Appellate Tribunal,
Ethiraj Salai
(Commander in Chief Road),
Chennai-8. ... Respondents in all W.Ps.

Petitions under Article 226 of the Constitution of India, praying for issuance of a writ of certiorari.

For petitioners : Mr.B.Kumar,
Senior Counsel,
for Mr.K.Chandrasekaran.

For respondents 1 & 2 :Mr.A.L.Somayaji,
Senior Counsel,
for Mr.R.Gowthama Narayanan

COMMON ORDER

M.KARPAGAVINAYAGAM,J.

Andhra Bank and State Bank of India, Hyderabad, filed an application against M/s.Bhanu Construction Co. Pvt. Ltd. and the guarantors, for recovery of a sum of Rs.19,95,86,510.79 before the Debts Recovery Tribunal, Hyderabad, in O.A.No.460 of 1999. After enquiry, the Debts Recovery Tribunal, Hyderabad, passed a decree in favour of the banks as against M/s.Bhanu Construction Co. Pvt. Ltd. and the guarantors on 31.10.2000. The judgment debtors, feeling aggrieved that the decree was passed on merits without giving an opportunity to them, filed an application to set aside the said decree, terming the same as an exparte one. Some of them filed applications to set aside the exparte decree. Some others filed applications to condone the delay in filing the applications to set aside the exparte decree. Ultimately, on 06.09.2002, the Debts Recovery Tribunal, Hyderabad, dismissed the said applications. Aggrieved by that, they filed appeals before the Debts Recovery Appellate Tribunal, situated at Chennai. After hearing the counsel for the parties, the Appellate Tribunal, dismissed the appeals. Hence, separate Writ Petitions have been filed by the judgment debtors, namely, M/s.Bhanu Construction Co. Pvt. Ltd. and the guarantors in W.P.Nos.3386,18669,18670 and 18671 of 2003 before this Madras High Court.

2. Since all these Writ Petitions would deal with the same question, they are being disposed of by a common order.

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3. The above Writ Petitions had come up for admission before the I Bench of this Court, which admitted the same and passed interim orders, granting stay of the decree, and issued notice to the banks, respondents 1 and 2 herein.

4. After service of notice, the respondents/banks filed a counter. Mr.A.L.Somayaji, learned Senior Counsel, appearing for Mr.R.Gowthama Narayanan, for the respondents, raised a preliminary objection that the Writ Petitions before this Madras High Court are not maintainable, since the subject matter of the Writ Petitions would deal with the order passed by the Debts Recovery Tribunal, Hyderabad, which is confirmed by the Appellate Authority, and, as such, the Andhra Pradesh High Court alone has jurisdiction.

5. In reply to the said contention, Mr.B.Kumar, learned Senior Counsel, appearing for Mr.K.Chandrasekaran, for the petitioners, would submit that the Appellate Tribunal is situated at Chennai; as such, part of cause of action has arisen at Chennai and, therefore, this High Court at Chennai has got jurisdiction.

6. In the light of the rival contentions made by the respective counsel for the parties as referred to above, it would be appropriate to deal with the preliminary objection, regarding the jurisdiction, before dealing with the merits of the matter.

7. The principal question, that arises for consideration, is the following :

> "Whether the petitioners are entitled to file Writ Petitions in this Madras High Court, even though the original orders were passed by the Debts Recovery Tribunal at Hyderabad, Andhra Pradesh, merely because the Debts Recovery Appellate Tribunal, which confirmed the said original orders, is situated at Chennai, within the territorial jurisdiction of this Court?"

8. The core of the contention, urged by Mr.B.Kumar, learned Senior Counsel for the petitioners, is two fold, which is as follows :

(i) The order impugned is passed by the Debts Recovery Appellate Tribunal, which is situated at Chennai, within the territory, in relation to which the Madras High Court exercises jurisdiction and, therefore, the Writ Petitions are maintainable under Article 226 (1) of the Constitution of India.

(ii) Though the order of the Debts Recovery Tribunal, Hyderabad, was challenged before the Debts Recovery Appellate Tribunal, when the Appellate Tribunal at Chennai disposed of the

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appeal, the said order of the Tribunal at Hyderabad gets merged with the order passed by the Appellate Tribunal; as such, the moment the order passed by the Appellate Tribunal at Chennai, giving a finding with reference to the order passed by the Tribunal at Hyderabad, the substantial cause of action would arise at Chennai also and, as such, the Writ Petitions are maintainable in this Madras High Court, under Article 226 (2) of the Constitution of India.

9. The gist of the reply for the above two points, given by Mr.A.L.Somayaji, learned Senior Counsel for the respondents, is as follows :

(i) Under Article 226 (1) of the Constitution, the High Court's jurisdiction depends upon the seat of the authority. Where the authority acts as Appellate Authority for more than one State and where the authority has power to change its place of sitting, then, a legal fiction is applied that when it deals with a case of a particular State, its seat is deemed to be within the State concerned and it is the place of locality 'in the eye of law'. Therefore, the Writ Petitions under Article 226 (1) of the Constitution in the Madras High Court are not maintainable.

(ii) In this case, the entire transaction took place only at Hyderabad. Admittedly, all the parties are at Hyderabad. There is no cause of action at Chennai. Merely because the order impugned has been passed by the Appellate Tribunal, which is situated at Chennai, the same, by itself, may not be considered to be a determinative factor, relating to the part of cause of action, compelling the High Court to decide the matter on merit. Therefore, Article 226 (2) also would not apply.

10. On the strength of the above pleas, both the learned Senior Counsel for the parties would advance their arguments at length.

11. Mr.B.Kumar, learned Senior Counsel for the petitioners, would cite the following authorities :

(i) AIR 1955 SC 233 (HARI VISHNU KAMATH v. AHMAD ISHAQUE AND OTHERS) ;

(ii) AIR 1961 SUPREME COURT 532 (LT.COL.KHAJOOR SINGH v. UNION OF INDIA AND ANOTHER) ;

(iii) AIR 1963 SUPREME COURT 1124 (COLLECTOR OF CUSTOMS, CALCUTTA, v. EAST INDIA COMMERCIAL CO.LTD., CALCUTTA AND OTHERS) ;

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(iv) AIR 1976 SUPREME COURT 331 (NASIRUDDIN v. STATE TRANSPORT APPELLATE TRIBUNAL) ;

(v) 1992 (2) L.W. 505 (K.JANARTHAN & ANR. v. R.THILAK KUMAR) ;

(vi) 1994 L.W. 256 (ELLAPURAM PANCHAYAT UNION v. SRI BHAVANIAMMAN DEVASTHANAM) ;

(vii) AIR 1995 SUPREME COURT 2148 (U.P.RASHTRIYA CHINI MILL ADHIKARI PARISHAD, LUCKNOW, v. STATE OF U.P. AND OTHERS) ;

(viii) 2000 (3) M.L.J.570 (ASHOK U.SAMAT AND OTHERS v. M/S.SHANTHI BUILDERS)

(ix) 2001 (129) E.L.T.11 (S.C.) (KUNHAYAMMED v. STATE OF KERALA);

(x) (2002) 5 SUPREME COURT CASES 377 (SUSHIL KUMAR SABHARWAL v. GURPREET SINGH AND OTHERS); and

(xi) JT 2004 (SUPPL.1) SC 475 (M/S.KUSUM INGOTS & ALLOYS LTD. v. UNION OF INDIA AND ANR.) ;

12. Mr.A.L.Somayaji, learned Senior Counsel for the respondents, would cite the following authorities :

(i) AIR 1952 BOMBAY 449 (M.E.T CO. v. RANGANATHAN);

(ii) AIR 1952 MADRAS 659 (RANGANATHAN v. MADRAS ELECTRIC TRAMWAYS) ;

(iii) AIR 1953 SUPREME COURT 210 (ELECTION COMMISSION v. VENKATA RAO) ;

(iv) AIR 1961 SUPREME COURT 532 (LT.COL.KHAJOOR SINGH v. UNION OF INDIA) ;

(v) AIR 1967 SUPREME COURT 1244 (M/S.HAJI ISMAIL NOOR MOHAMMAD AND CO. v. COMPETENT OFFICER, LUCKNOW) ;

(vi) (1984) 3 SUPREME COURT CASES 698 (SMT.SURINDER KAUR SANDHU v. HARBAX SINGH SANDHU AND ANOTHER) ;

(vii) AIR 1984 SUPREME COURT 1264 (UNION

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OF INDIA v. M/S.OSWAL WOOLLEN MILLS LTD.);

(viii) (1998) 5 SUPREME COURT CASES 310 (WORLD TANKER CARRIER CORPORATION v. SNP SHIPPING SERVICES PVT.LTD.) ;

(ix) AIR 1998 SUPREME COURT 1855 (M/S.CHETAK CONSTRUCTION LTD. v. OM PRAKASH);

(x) (1999) 8 SUPREME COURT CASES 525 (RAJIV BHATIA v. GOVT. OF NCT OF DELHI) ;

(xi) 2000 (3) SUPREME COURT CASES 14 (SARITA SHARMA v. SUSHIL SHARMA)

(xii) AIR 2002 CALCUTTA 223 (NAVIN JAIN v. STATE BANK OF INDIA) ;

(xiii) III (2002) BC 269 (DB) (SYNDICATE BANK v. MRS.K.CHANDRAKALA BHAKTA & ORS.); and

(xiv) AIR 2004 SUPREME COURT 2321 (M/S.KUSUM INGOTS AND ALLOYS LTD. v. UNION OF INDIA AND ANOTHER);

13. We have heard the learned Senior Counsel for the parties and also perused the records. Let us now deal with the main question, with reference to the jurisdiction.

14. The first limb of arguments advanced by the learned Senior Counsel for the petitioners is that these Writ Petitions are maintainable under Article 226 (1) of the Constitution, as the orders impugned in these cases are passed by the Debts Recovery Appellate Tribunal, which is situated at Chennai, within the territory, in relation to which the Madras High Court exercises jurisdiction.

15. Regarding this contention, it shall be stated that we are of the considered opinion that this Madras High Court cannot be requested to usurp the jurisdiction of the Andhra Pradesh High Court, which is vested with the power of superintendence and review of the orders passed by the Tribunal at Hyderabad, by applying the prevailing law applicable to Andhra Pradesh.

16. Under Article 226 (1) of the Constitution, the High Court's jurisdiction depends upon the seat of the authority. In view of the fact that one DRAT is constituted for several DRTs within several States and for convenience the seat of DRAT is located at Chennai, the seat of the DRAT, in the eye of law, depends upon the place of DRT, whose order it deals with.

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17. Of course, it is true that DRAT is situated at Chennai. But, by virtue of the legal fiction, the seat of the DRAT should be deemed to be within the State concerned. In other words, when the seat of the Appellate Authority is situated in one place for convenience; where the same authority acts as the Appellate Authority for more than one State and where the authority has the power to change its place of sitting, then a legal fiction applies that when it deals with a case of a particular State, its seat is deemed to be within the State concerned. This is the location of the Appellate Authority 'in the eye of law'.

18. In this context, it would be worthwhile to refer to the observation of the Supreme Court, which makes a distinction of legal and factual place of authority. The relevant observation in AIR 1967 SUPREME COURT 1244 is as follows:

> "....in the present case, the appellate authority, though for convenience is having its head office in New Delhi, is factually and legally functioning under the State Act within the territorial jurisdiction of the High Court. To hold that such an authority, which is appointed by the State Government and holds office, entertains and disposes of appeals within the State is outside the jurisdiction of the High Court is to carry technicality beyond reasonable limits. One can hold reasonably that such an appellate authority is located within the territorial limits of the High Court for the purpose of disposing of the appeals under the Act...."

19. In this connection, it would also be relevant to refer to Rule 3 of The Debts Recovery Appellate Tribunal (Procedure) Rules,1994.

> "3. Sitting of Appellate Tribunal - An Appellate Tribunal shall hold its sittings either at headquarters or at such other place falling within its jurisdiction as it may consider convenient."

According to this Rule, an Appellate Tribunal can hold its sitting either at headquarters or at such other place falling within its jurisdiction as it may consider convenient.

20. Thus, it is clear that the location of the Appellate Tribunal may vary from time to time according to its convenience. In the present case, as indicated above, the Appellate Tribunal is, in the eye of law, located at Hyderabad, though, for convenience,

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it holds office at Chennai, as the same Presiding Officer has been discharging the same function for other States.

21. Admittedly, this Madras High Court has no power of jurisdiction or superintendence, either administrative or judicial, over the Debts Recovery Tribunal at Hyderabad. Merely because the Appellate Tribunal is situated within the territorial limits of this High Court, such a fact cannot confer jurisdiction to scrutinise the order passed by such Tribunal in any appeal preferred against the decision of the original Tribunal, over which this Court has no power of superintendence.

22. By virtue of Article 226 (1) of the Constitution, this High Court shall have power to issue appropriate orders to all Courts and Tribunals throughout the territories of this State, in relation to which it exercises jurisdiction, and can call for the returns from such Tribunals and may also make order, issue general rules and prescribe forms for regulating the practice and proceedings of such Courts and Tribunals. If a Tribunal is constituted as Appellate Tribunal for hearing appeals against decisions of more than one original Tribunal situated in different States, in our view, in such a case, for the purpose of challenging the orders of such Appellate Tribunals by way of an application under Article 226 or 227 of the Constitution, the aggrieved party is to approach the High Court of that State within the territorial limit of which the original Tribunal exercises jurisdiction in a particular case.

23. While entertaining the petitions under Article 226 of the Constitution of India, this Court must ascertain as to what is the effect of interference prayed for in the Writ Petitions. If the result of such intervention is that an order of a Tribunal, over which this High Court has no power of superintendence, has to be subjected to scrutiny, then, in that case, this High Court should refuse to entertain such a request. Therefore, there is no difficulty for this Court to conclude that this High Court would not entertain the Writ Petitions mainly on two reasons, namely, (i) it would amount to interfering into and usurping the power of the Andhra Pradesh High Court, which alone is vested with the power of going into the legality or otherwise of the order of the Tribunal at Hyderabad, which has been confirmed by the Appellate Tribunal at Chennai and (ii) the seat of the Appellate Authority must be deemed to be within Hyderabad, though the building of the Office is situated at Chennai, for convenience.

24. Let us now deal with the second limb of arguments, urged by the learned Senior Counsel for the petitioners, with regard to the cause of action.

25. The concept of cause of action under Article 226 of the Constitution of India came to be considered before the

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Constitution Bench of the Supreme Court of India in AIR 1961 SUPREME COURT 532 (LT.COL.KHAJOOR SINGH v. UNION OF INDIA). The concept theory of cause of action was rejected by the Supreme Court, on the ground that the Courts have no power to impose new concept, when Article 226 does not provide for it. This judgment necessitated the amendment to Article 226 and, hence, sub-clause (2) was introduced by 15th Amendment.

Article 226 (2) :

> "The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories."

26. Thus, the legal position, after the amendment, is that a writ can be issued by a High Court, within whose jurisdiction the cause of action wholly or in part arises, irrespective of the seat of the authority.

27. According to Mr.B.Kumar, learned Senior Counsel for the petitioners, the cause of action, which originally arose at Hyderabad, ceases to exist and may get merged with the orders passed by the Debts Recovery Appellate Tribunal at Chennai; hence, the substantial cause of action is only at Chennai, within the territorial jurisdiction of this High Court at Chennai and that when the Appellate Authority exercises jurisdiction it would form part of the cause of action, although the original order is passed by the authority, situated outside the jurisdiction of the Madras High Court and, therefore, writ is maintainable under Article 226 (2) of the Constitution of India. He cited AIR 2004 SUPREME COURT 2321 (M/S.KUSUM INGOTS AND ALLOYS LTD. v. UNION OF INDIA) and pointed out the principle laid down therein. The relevant observation pointed out by the learned Senior Counsel for the petitioners is para 27 of the said judgment, which reads as follows :

> "When an order, however, is passed by a Court or Tribunal or an executive authority whether under provisions of a statute or otherwise, a part of cause of action arises at that place. Even in a given case, when the original authority is constituted at one place and the appellate authority is constituted at another, a writ petition would be maintainable at both the places. In other words, as order of

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> the appellate authority constitutes a part of cause of action, a writ petition would be maintainable in the High Court within whose jurisdiction it is situate having regard to the fact that the order of the appellate authority is also required to be set aside and as the order of the original authority merges with that of the appellate authority."

28. In the light of the above observation, it is strenuously contended that the above decision is an authority for the proposition that the place from where an appellate order is passed may give rise to a part of cause of action, although the original order was at a place outside the said area and when a part of the cause of action arises within one or the other High Court, it is for the petitioners to choose their forum and, as such, they have chosen the Madras High Court, since the part of cause of action has arisen when the Appellate Tribunal situated at Chennai passed the final order, which is challenged.

29. On the other hand, it is pointed out by Mr.A.L.Somayaji, learned Senior Counsel for the respondents, that even assuming that the seat of the Debts Recovery Appellate Tribunal gives a part of cause of action at Chennai, the Supreme Court, in the very same decision in paragraph 30, advised that merely because a fraction of cause of action is arising in the High Court, it need not be a ground to issue a writ and this Court can refuse to exercise the discretionary jurisdiction by applying the principle of 'forum convenience'. The relevant observation of the Supreme Court is as follows :

> "We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum convenience." (emphasis supplied.)

30. In the light of the above dicta laid down by the Supreme Court in paragraphs 27 and 30, we shall now decide whether we could entertain these Writ Petitions and go into the merits, on the reason that part of cause of action has arisen at Chennai, as the order of the Appellate Authority is situated at Chennai or whether we could refuse to entertain the same, by exercising our discretionary jurisdiction ?

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31. In order to decide the said questions, it would be proper to consider the conduct of the parties and, to a certain extent, the merits of the case, with a view to find out, whether there is any chance of success and also bona fides of the parties. On these aspects, counsel for the parties were heard.

32. Let us now deal with the Writ Petitions, one by one:

W.P.No.3386 OF 2003 :

(i) (a) The banks filed a suit for recovery of a sum of Rs.19,95,86,510.79 against the petitioners, namely, M/s.Bhanu Construction Co.Pvt.Ltd. and Sri B.Venkateswara Rao and others, in a City Civil Court at Hyderabad. After a separate Tribunal was constituted, the said case was taken on file at Hyderabad in O.A.No.460 of 1999. On 25.08.2000, the witnesses, on behalf of the plaintiff banks, were examined in chief and, on 20.09.2000, they were examined in cross. But, no witness was produced on 12.10.2000 on the side of defendants. Therefore, on 31.10.2000, the Tribunal passed orders on merits and decreed the application.

(b) The petitioners, challenging the said decree, filed W.P.No.5720 of 2001 in Andhra Pradesh High Court at Hyderabad. On 04.04.2001, the Andhra Pradesh High Court dismissed the said Writ Petition, directing the petitioners to avail the alternate remedy, either by filing an appeal before the Appellate Tribunal or by filing an application before the Debts Recovery Tribunal, seeking to recall the order impugned.

(c) The petitioners, thereafter, filed M.A.No.18 of 2001 before the Debts Recovery Tribunal, Hyderabad, for recalling the order dated 31.10.2000. The said application was dismissed for default on 19.10.2001, as there was no representation. Instead of pursuing the above matter, the petitioners filed another application M.A.No.1307 of 2002 before the Tribunal at Hyderabad, seeking for condonation of delay of 602 days, in filing an application to set aside the exparte decree. The Debts Recovery Tribunal dismissed the same by an order dated 06.09.2002, holding that the reasons for the delay were not bona fide.

(d) The petitioners challenged the said order in W.P.No.17152 of 2002 in Andhra Pradesh High Court, which, in turn, dismissed the same, with a direction to the petitioners to prefer an appeal before the Appellate Tribunal, before coming to the High Court. Accordingly, they filed an appeal before the Debts Recovery Appellate Tribunal at Chennai in M.A.No.203 of 2002, challenging the order in M.A.No.1307 of 2002, dated 06.09.2002. The Appellate Tribunal, by an order dated 31.01.2003, dismissed the appeal and confirmed the order passed by the Tribunal.

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(ii) The above facts would make it clear that the petitioners in this Writ Petition approached the Andhra Pradesh High Court twice and obtained orders, with a direction to exhaust their remedy before the Tribunal and the Appellate Tribunal. Accordingly, they filed an application before the Tribunal and also an appeal before the Appellate Tribunal and got them dismissed. Now, this time, they have chosen to file this Writ Petition, before this Madras High Court, instead of approaching the Andhra Pradesh High Court.

(iii) In the light of the above factual situation, three questions would arise. They are :

(1) The petitioners, having filed W.P.No.5720 of 2001 before the Andhra Pradesh High Court for a direction for reopening the case by the Tribunal to put forth their defence and having obtained the order dated 04.04.2001, getting liberty to file an application for recalling the order impugned before the Tribunal and also having filed an application for reopening the case in M.A.No.18 of 2001 before the Tribunal, in pursuance of the order of the Andhra Pradesh High Court, why have they allowed the said application M.A.No.18 of 2001 to be dismissed for default on 19.10.2001 ?

(2) Having chosen to file M.A.No.18 of 2001 to reopen the case in O.P., as per the liberty given by the Andhra Pradesh High Court, why the petitioners did not choose to pursue the said application, which was dismissed for default and, instead of doing that, why have they filed an independent application to set aside the exparte order along with the application to condone the delay of 602 days on 24.07.2002 i.e., long after 19.10.2001?

(3) The petitioners, having chosen to challenge the decrees twice passed by the Tribunal dated 31.10.2000 and 06.09.2002 in Andhra Pradesh High Court and got liberty to file an application before the Tribunal and an appeal before the Appellate Tribunal and having exhausted the said remedies, why have they not gone back to Andhra Pradesh High Court and instead have now they come before this Court to file Writ Petition ?

(iv) For these questions, there is no proper answer from the learned Senior Counsel for the petitioners. On the other hand, it has been merely stated that cause of action has arisen at Chennai also and, as such, they have approached this Madras High Court.

(v) As indicated above, the decree was passed by the Tribunal on 31.10.2000. Prior to the date of decree, the witnesses, produced by the banks, were crossexamined by the counsel for the petitioners on 20.09.2000 and the case was

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adjourned to 04.10.2000. Again, on 04.10.2000, the case was adjourned to 12.10.2000, on the ground that the second petitioner sustained fracture. On 12.10.2000, there was no representation. Ultimately, the evidence was closed and orders were pronounced on 31.10.2000. After a delay of 602 days, the petitioners filed an application on 24.07.2002 to condone the delay, in filing an application to set aside the exparte order. Curiously, the petitioners originally filed M.A.No.18 of 2001 to set aside the exparte order, passed on 31.10.2000, which was dismissed for default on 19.10.2001. Having filed such an application to set aside the exparte order, as indicated above, there was no reason as to why the said application was allowed to be dismissed for default and why there was another application filed to condone the delay in filing the application to set aside the exparte order.

(vi) It is noticed from the records that both the Tribunal and the Appellate Tribunal would observe that the inordinate delay of 602 days had not been explained and sufficient cause was not shown. The Tribunals further found that the petitioners were aware of the proceedings, since they earlier filed an application and got the same dismissed for default and, as such, the delay was uncondonable.

(vii) In the absence of anything to indicate that the said finding is wrong and in the light of lack of bona fide, we are constrained to hold that this is one of the appropriate cases, where this Court shall refuse to exercise its discretionary jurisdiction to entertain this Writ Petition. Accordingly, this Writ Petition is dismissed.

W.P.No.18669 OF 2003 :

(i) (a) B.Rajasekhar, petitioner in this Writ Petition, is one of the respondents, along with the other judgment debtors, namely, M/s.Bhanu Construction Co.Pvt.Ltd. and Sri B.Venkateswara Rao, in O.A.No.460 of 1999.

(b) Earlier, an exparte order was passed against this petitioner on 23.07.1998. On filing an application to set aside the said exparte order, it was set aside on 13.11.1998. Ultimately, the Tribunal passed the decree on 31.10.2000 on merit as against M/s.Bhanu Construction Co.Pvt.Ltd., Sri B.Venkateswara Rao and this petitioner also.

(c) Since the said decree was said to be exparte as against the petitioner, he was advised to file an application to set aside the said decree and, as there was a delay of 1456 days in filing the said application, he filed I.A.1531 of 2002 before the Tribunal, to condone the said delay. The said application was dismissed on 06.09.2002, holding that the reasons for the delay were not satisfactory.

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(d) Challenging the said order, the petitioner filed an appeal before the Debts Recovery Appellate Tribunal, Chennai, in M.A.No.239 of 2002.

(e) Pending appeal before DRAT, the petitioner filed W.P.No.18982 of 2002 before the Andhra Pradesh High Court, challenging the auction conducted by the Recovery Officer, in pursuance of the decree passed on 31.10.2000.

(f) On noticing that the appeal before DRAT was pending, the Andhra Pradesh High Court, on 30.09.2002, passed an order, directing the petitioner to deposit a sum of Rs.50.00 lakhs within eight weeks before DRAT, where the appeal is pending, and granted conditional stay of confirmation of sale in auction. The Andhra Pradesh High Court further directed the DRAT to dispose of the matter only after the deposit was made within the time specified.

(g) The petitioner, instead of depositing Rs.50.00 lakhs within eight weeks, filed two more miscellaneous petitions, namely, W.P.M.P.No.27596 of 2002 and 34842 of 2002 in Andhra Pradesh High Court, seeking for modification of the above order. However, he was not able to get the order modified.

(h) Since the order, directing deposit, was not complied with, the Appellate Tribunal, Chennai, in accordance with the directions given by the Andhra Pradesh High Court, took up M.A.No.239 of 2002 and dismissed the appeal on 28.02.2003, thereby confirming the order passed by the Tribunal at Hyderabad in I.A.No.1531 of 2002. Thereafter, the petitioner has come before this Court and filed this Writ Petition.

(ii) The above factors would indicate that the petitioner, instead of challenging the said order before the Andhra Pradesh High Court at Hyderabad, filed this Writ Petition before this Court.

(iii) The questions that arise in this case are, as to why the petitioner, having gone to the Andhra Pradesh High Court, seeking for the relief of the same matter thrice and having obtained a conditional order of stay, chose to come to this Court, without complying with the order of the Andhra Pradesh High Court ? and also, having chosen Andhra Pradesh High Court as forum convenience, for seeking the relief of stay of confirmation of sale in auction, why he has come to this Court, after disposal of the appeal, without seeking clarification of the order passed by the Andhra Pradesh High Court and without filing writ petition before the said Court ?

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(iv) There is no proper answer for these questions. On the other hand, it is contended, raising the following points :

(a) The Appellate Tribunal did not consider the appeal on merits and merely because the conditional direction given by the Andhra Pradesh High Court has not been complied with, the Appellate Tribunal cannot dismiss the appeal.

(b) The conditional order of stay, passed by the Andhra Pradesh High Court is illegal and against law, in view of the decision of the Supreme Court in Mardia Chemicals, reported in AIR 2004 SC 2371.

(c) The order passed by DRT holding that the registered post cover returned as "not claimed" would amount to proper service is wrong. Mere endorsement "not claimed" cannot amount to proper service, in the light of various provisions in C.P.C. Article 123 of the Limitation Act states that limitation will commence only if the summons is duly served. In this case, summons is not duly served and, therefore, there is no delay.

(v) At the outset, it shall be stated that the argument advanced by the learned Senior Counsel for the petitioner that there is no delay at all, in view of the failure to follow the provisions of the C.P.C. with reference to service of summons, is untenable.

(vi) Firstly, the stand that "not claimed" would not amount to proper service, taken by the petitioner now, had never been taken by him before DRT or DRAT. Further, the original case was transferred to DRT, Bangalore, on establishment of separate tribunals. This fact was known to the petitioner and he admitted that he has knowledge of the proceedings before DRT, Bangalore. The DRT Diary, as pointed out by the counsel for the respondents, would show that the counsel, on behalf of Rajasekhar/D-7, petitioner, entered appearance on 13.11.1998 and adopted the written statement, filed by defendants 1 and 2. This fact was also recorded in the order of DRT. Further, the nature of service of summons becomes irrelevant, in view of the fact that the petitioner himself filed an application to condone the delay of 1456 days. When he chose to file an application to condone the delay, he cannot now contend that the endorsement "not claimed" does not amount to service.

(vii) Similarly, it is quite strange to contend that the interim order passed by the Andhra Pradesh High Court is illegal. Firstly, such an argument was not advanced before the DRAT. Secondly, it would not be permissible for the Appellate Tribunal to refuse to follow the directions of the Andhra Pradesh High Court, on the said ground. Also, it is not proper for the petitioner to

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request this Court to go into the correctness of the order of the Andhra Pradesh High Court and hold that it is an illegal order.

(viii) The fact remains that the petitioner approached Andhra Pradesh High Court and got a conditional order in his favour, but did not choose to comply with the same and, on the other hand, he represented to the Appellate Tribunal that he had filed a clarification petition and also a petition for extension of time before the Andhra Pradesh High Court. On the basis of the said representation, sufficient time was granted by DRAT to get the orders from Andhra Pradesh High Court. Unfortunately, he has not chosen to pursue the miscellaneous petitions, said to be pending before the Andhra Pradesh High Court, and obtain either a clarification order or a modified order.

(ix) Therefore, this Writ Petition also would fail, not only for lack of bona fide, but also due to devoid of merits in the contentions.

W.P.No.18670 OF 2003 :

(i) (a) K.Suribabu and B.Nagendramma are the other respondents in O.A.No.460 of 1999. The banks filed the said O.A., for recovery of the loan amount, arraying the petitioners also as defendants, along with M/s.Bhanu Construction Co.Pvt.Ltd. and Sri B.Venkateswara Rao. The decree was passed on 31.10.2000.

(b) The petitioners filed M.A.No.58 of 2002, to set aside the exparte decree, dated 31.10.2000, passed in the O.A. On 06.09.2002, the Tribunal dismissed the said application. Then, they filed an appeal M.A.No.237 of 2002 before the Appellate Tribunal.

(c) In the meantime, in pursuance of the decree, auction was held on 13.09.2002 for sale of the property. Pending appeal before the Appellate Tribunal, the petitioners rushed to the Andhra Pradesh High Court and filed W.P.No.18982 of 2002 along with B.Rajasekhar, petitioner in W.P.No.18669 of 2003, challenging the said auction.

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(d) The Andhra Pradesh High Court passed a conditional order on 30.09.2002, directing the petitioners to deposit a sum of Rs.50.00 lakhs with the bank within a period of eight weeks and also directing the Appellate Tribunal to take up the appeal for disposal thereafter. But, the amount of Rs.50.00 lakhs was not deposited by the petitioners within the period of eight weeks from the date of the order.

(e) When the Appellate Tribunal pointed out to the petitioners with regard to the deposit, on behalf of the petitioners, it was submitted that they filed a petition for

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clarification and also seeking for modification of the order, before the Andhra Pradesh High Court.

(f) The Appellate Tribunal, in the light of the specific direction given by the Andhra Pradesh High Court that only after deposit of the money the Appellate Tribunal can take up the matter to consider the question of setting aside the exparte order, dismissed the appeal, as the conditional order, pending appeal, was not complied with.

(ii) It is noticed, that on the date of disposal of the appeal, it was represented by the learned counsel for the appellants that they filed petitions for clarification and extension of time and the same were pending. Instead of pursuing the matter before the Andhra Pradesh High Court where the miscellaneous petitions were pending in regard to the same matter, the petitioners have now chosen to come to this Court, seeking to set aside the order of the Appellate Tribunal.

(iii) The learned Senior Counsel appearing for the petitioners in this Writ Petition would contend that the order of the Tribunal was not communicated to the petitioners as per the relevant sections and rules of the DRT Act.

(iv) A perusal of the Appellate Tribunal order would indicate that the parties have not chosen to comply with the conditional order, passed by the Andhra Pradesh High Court, in time and a perusal of the order of the DRT would indicate that the petitioners were duly represented by their counsel and actively participated in the proceedings both at Bangalore and Hyderabad. It is also stated in the DRT order that the Presiding Officer of DRT, Bangalore, conducted Camp Courts at Hyderabad on specified dates and the counsel appearing for the defendants were duly informed. It is further observed by the Tribunal that the petitioners have clearly suppressed the facts and their counsel duly represented them from 22.07.1997 in the Camp Court, which was conducted at Hyderabad. The Tribunal has also given so many details indicating that the bona fide has not been established.

(v) Therefore, in the absence of the reasons as to why the petitioners have not pursued the matter before the Andhra Pradesh High Court, having approached it earlier, and as to why they have to approach this Court, without approaching the Andhra Pradesh High Court, would indicate that this Writ Petition also would fail, due to lack of bona fides.

W.P.No.18671 OF 2003 :

(i) (a) B.Venkat Rao, petitioner herein, is one of the respondent guarantors in O.A.No.460 of 1999. After the decree, he filed an application M.A.54 of 2002 before the Tribunal at

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Hyderabad, for setting aside the exparte decree. The ground urged by him was that the summons had not been served on him.

(b) After enquiry, on 06.09.2002, the Tribunal dismissed the said application, holding that the summons sent to the petitioner was duly served on him. Thereafter, the petitioner, challenging the said order, preferred C.R.P.4088 of 2002 under Article 227 of the Constitution of India before the Andhra Pradesh High Court at Hyderabad. On 25.09.2002, the said C.R.P.was dismissed, giving liberty to the petitioner to prefer an appeal before the Appellate Tribunal.

(c) Thereafter, the petitioner filed an appeal before the Appellate Tribunal at Chennai in M.A.No.238 of 2002. The Debts Recovery Appellate Tribunal, by the order dated 28.02.2003, dismissed the appeal and confirmed the order of the Tribunal at Hyderabad. Instead of challenging the said order before the Andhra Pradesh High Court at Hyderabad, where he had earlier approached, now, he has chosen to file this Writ Petition before this Madras High Court.

(ii) Thus, the petitioner, even though invoked the jurisdiction of the Andhra Pradesh High Court against the order passed in M.A.No.54 of 2002 earlier and in pursuance of the said order he filed an appeal before the Appellate Tribunal, without choosing to go back to Andhra Pradesh High Court at Hyderabad, he has chosen to approach this High Court at Madras.

(iii) According to the petitioner, pendency of the matter before DRT, Hyderabad, after transfer, is not in his knowledge. But, both the Tribunal and the Appellate Tribunal, on a perusal of the records, found that there was intimation to the petitioner, regarding the transfer. The following is the observation of the Appellate Tribunal :

> "I too perused the entire records and I found that the postal acknowledgement in proof of service of summons to the appellant forms part of the record and that acknowledgement clearly proves that the summons to the appellant was duly served in the O.A....
>
> In the case on hand, there is proper service of summons by the transferee Court DRT, Bangalore, after transfer to DRT, as indicated above. So, service of notice by the DRT, Bangalore, by registered post has been done and the acknowledgement by the party is deemed to be sufficient proof of service of summons."

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(iv) The relevant observation of the Tribunal is as follows :

> "A perusal of the proceedings before the DRT, Bangalore, shows that the summonses were sent to the defendants and the proceedings dated 22.7.1997 reveal that the summonses sent to the defendants 2 & 3 were duly served and held sufficient. Further, the postal acknowledgement card in proof of service of summons to the 3rd defendant/petitioner herein forming part of the record clearly shows that the summons was duly served on the 3rd defendant and that the contentions made by the petitioner cannot at all be believed."

(v) As held by the Supreme Court in AIR 1962 SUPREME COURT 666, intimation of the transfer given to the parties in the proceedings of the Court is sufficient compliance and requirement of notice.

(vi) Even assuming that the petitioner knew only the pendency of the proceedings before the DRT, Bangalore, and not the DRT, Hyderabad, there is no reason as to why he kept quiet all along, even though transfer was made as early as 22.07.1997.

(vii) Under those circumstances, we cannot accept the claim of the petitioner that he has no knowledge, as there is no bona fide.

33. The common factor that could be noticed in all these Writ Petitions is that the petitioners, either jointly or individually, have tapped the doors of the Andhra Pradesh High Court earlier and, having not complied with the condition of the interim order of stay granted in their favour passed by the Andhra Pradesh High Court, they have chosen to tap the doors of this Madras High Court.

34. Some petitioners approached the Andhra Pradesh High Court thrice, either during the pendency of the proceedings before the Tribunal or during the pendency of the appeal before the Appellate Tribunal. Some petitioners approached the Andhra Pradesh High Court twice, after having filed the appeal before the Appellate Tribunal. Similarly, some petitioners filed petitions to condone the delay in filing applications to set aside the exparte decree. Some petitioners did not even choose to file petitions to condone the delay, but, straightaway, filed applications to set aside the exparte decree, even though there was delay.

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35. The fact remains that the petitioners had knowledge about the proceedings against them and their counsel entered appearance both in the Civil Court and in the Tribunal. Therefore, the contention, that they did not have knowledge and since they have not been given an opportunity by the Tribunals they have come before this Madras High Court, even though they had chosen to invoke the jurisdiction of the Andhra Pradesh High Court earlier, is unacceptable. This is nothing but 'forum shopping'.

36. As laid down by the Supreme Court in AIR 1998 SUPREME COURT 1855 (M/S.CHETAK CONSTRUCTION LTD. v. OM PRAKASH), we cannot approve of any attempt on the part of the petitioners to go "forum shopping". In our view, the petitioners cannot be permitted 'choice' of the 'forum' and every attempt at "forum shopping" must be crushed with a heavy hand.

37. The modern theory of Conflict of Laws prefers the jurisdiction of the State, which has the most intimate contact with the issues arising in this case. To allow the assumption of jurisdiction by another State will only result in encouraging 'forum shopping'. This Court is not inclined to become a party to the act of the petitioners, who indulge in 'forum shopping', reflecting their conduct, which lacks bona fide.

38. In view of what is stated above, all these Writ Petitions are dismissed. No costs. Consequently, the connected W.P.M.P.Nos.4241,6664,6665,23345 to 23348, 40467,40468 of 2003 and W.V.M.P.Nos.448 and 449 of 2005 are closed.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1.Debts Recovery Tribunal,
V Floor, Triveni Complex,
Abids, Hyderabad.

2.Debts Recovery Appellate Tribunal,
Ethiraj Salai
(Commander in Chief Road),
Chennai-8.

3.Chief Manager,
Andhra Bank,
Balanagar Branch,
Hyderabad.

4.Assistant General Manager,
State Bank of India,
Yellareddyguda Branch,
Hyderabad.

+4 CC to Mr.K.Chandrasekar, Advocate, SR No.41622

+4 CC to Mr.R.Gowthama Narayanan, Advocate, SR Nos.41599, 41597, 41600, 41598

+1 CC to Mr.T.Ramesh, Advocate, SR No.41675

TR(CO)
BG/18.10.2005

W.P.Nos.3386 AND 18669 TO
18671 OF 2003

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